

Indiana Department of State Revenue

Ruling # 2000-01 ST

February 7, 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date is superseded or deleted by publication of a new document in the Indiana Register. The publication of a new document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales/Use Tax - Aircraft

Authority: IC 6-2.5-3-1, IC 6-2.5-2-1, IC 6-2.5-3-2, IC 6-2.5-1-2, IC 6-2.5-4-1, IC 6-2.5-5-16, IC 6-2.5-4-10, IC 6-6-6.5-12, IC 6-6-6.5-9, Rule 45 IAC 2.2-4-20, Rule 45 IAC 2.2-4-27.

The taxpayer requests the Department rule on the application of sales/use tax to its expanded operations.

STATEMENT OF FACTS

The taxpayer, operating as an Airport Authority, is a political sub-division of the state of Indiana. The taxpayer recently expanded the services it offers by initiating the operation of a Flight School and Fixed Base Operation (which provides aircraft fuel, oil and related services). These services are offered to users of the airport. When preparing for the start-up of these expanded services, the taxpayer contacted the Indiana Department of Revenue to discuss the application of sales taxes to the expanded operations. Sales Tax has been collected and remitted for items sold to the flying public in accordance with these discussions.

The taxpayer recently purchased three (3) airplanes and leases an additional seven (7) for use in the Flight School. Although these airplanes are routinely rented for use without a flight instructor on board, the majority of the flights involve an instructor providing training to a student. When the taxpayer attempted to register the aircraft with the state of Indiana, they were advised that sales tax was due on the acquisition even though the registration form specifically exempts aircraft used in rental activities. Compounding the confusion is the taxpayer's status as a municipal corporation. The taxpayer requests assistance in answering several questions regarding the applicability of Indiana sales tax to their expanded operations.

DISCUSSION

Indiana sales/use tax responsibility for acquisitions of tangible personal property by State or local government is explained in IC 6-2.5-5-16 that provides:

Transactions involving tangible personal property, public utility commodities, and public utility service are exempt from the state gross retail tax, if the person acquiring the property, commodities, or service:

- (1) is the state of Indiana, an agency or instrumentality of the state, a political subdivision of the state, or an agency or instrumentality of a political subdivision of the state; and
- (2) predominately uses the property, commodities, or service to perform its governmental functions.

Of particular relevance to the taxpayer's expanded operations are the provisions of Indiana Administrative Rule 45 IAC 2.2-4-20 that states:

The state of Indiana, its agencies and instrumentalities, all counties, townships and municipal corporations, their respective agencies and instrumentalities, and all other state governmental entities and subdivisions, including state colleges and universities, shall, in the performance of private or proprietary activities or business, constitute retail merchants making retail transactions in respect to receipts which would constitute gross retail income from a retail transaction if received by a retail merchant.

An additional area to explore is whether the taxpayer is entitled to a "resale exemption" for the rental of the airplanes. Per IC 6-2.5-4-10:

- (a) A person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person.

The taxpayer states that although the airplanes are routinely rented for use without a flight instructor on board, the majority of the flights involve an instructor providing training to a student, therefore at issue is whether the taxpayer is engaged in the business of renting or is providing a service. Indiana Administrative Rule 45 IAC 2.2.4-27 provides in part:

- (3) Renting or leasing property with an operator:

- (A) The renting or leasing of tangible personal property, together with the services of an operator shall be subject to the tax when **control** (emphasis added) of the property is exercised by the lessee. Control is exercised when the lessee has exclusive use of the property, and the lessee has the right to direct the manner of the use of the property. If these conditions are present, control is deemed to be exercised even though it is not actually exercised.

TAXPAYER QUESTIONS AND RULINGS

1. One (1) airplane was purchased outside the state of Indiana and two (2) were purchased in Indiana but not from registered dealers, and no Indiana sales tax was paid at the time of purchase. Are the airplanes exempt, as suggested on State Form 7695 "Application for Aircraft Registration or Exemption"?

RULING

The Flight School operations are proprietary activities and the receipts therefrom constitute gross retail income. Therefore, the airplanes would not be allowed the exemption afforded political subdivisions in IC 6-2.5-5-16(2) explained above. In addition, the element of lessee control is not present when the flight involves an instructor providing training to a student since control would rest with the flight instructor and not the student. Therefore, when the flights involve an instructor providing training, the taxpayer is providing a service and is not engaged in the

business of renting tangible personal property. As this is a proprietary activity, there is no exemption from the Indiana sales tax for the airplanes used in this manner. The taxpayer is engaged in the business of renting tangible personal property when the airplanes are rented for use without a flight instructor on board and the lessee exercises control of the airplane. The taxpayer would be entitled to an exemption from the Indiana sales tax when the airplanes are used in this manner.

2. When, if ever, is sales tax to be charged customers on the use of the airplane?

RULING

The taxpayer should charge the Indiana sales tax when the airplanes are rented for use without a flight instructor on board and the lessee exercises control of the airplane.

3. Is Indiana sales tax applicable to the purchase of parts and oil to repair these airplanes?

RULING

A partial exemption is applicable. Purchases of parts to repair the airplanes would be taxable to the extent they are used for those flights when an instructor is on board providing training. Purchases of parts used to repair the airplanes would be exempt to the extent they are used for those rentals without a flight instructor on board and the lessee exercises control of the airplane. Purchases of oil would be subject to Indiana sales tax in either case since the lessor would be considered the consumer of supplies that are furnished with the property that is rented or leased.

4. Is Indiana sales tax applicable to the purchase of fuel for these airplanes?

RULING

As stated earlier, the taxpayer is considered a service provider for those flights where an instructor is on board providing training, therefore all purchases of fuel for that purpose would be subject to the Indiana sales tax. There is insufficient information given to ascertain if the fuel is being provided under the terms of a “dry lease” or a “wet lease” for those rentals without a flight instructor on board and the lessee exercises control of the airplane. An explanation of Department policy for each is as follows:

- I. A “wet lease” is a lease agreement whereby a lessor initially provides fully fueled motorized equipment to a lessee and agrees to reimburse the lessee for any fuel purchased by the lessee thereafter from third parties. The separate charge to the lessee for the fuel initially provided is subject to the collection of Indiana sales tax. The purchase by a lessor of fuel contained in equipment to be leased under a “wet lease” is a purchase for “resale” (lease) and is exempt from sales tax upon acquisition.
- II. A “dry lease” is a lease agreement whereby a lessor provides the equipment without fuel to a lessee. Usually the equipment is initially fully fueled and the lessee agrees to return the equipment with the same quantity of fuel at the end of the lease. Fuel sold to a lessee by the lessor for purposes of replacing the fuel initially contained in the leased equipment is subject to collection of sales tax and is exempt when purchased by the lessor under the resale exemption. The purchase by a lessor of fuel **initially provided** with equipment to be leased under a “dry lease” is taxable at the time of purchase. The lessor is the consumer of fuels which are furnished with the property which is leased [see Indiana Administrative Rule 45 IAC 2.2-4-27(d)(4)].

5. Is the taxpayer responsible for property tax on these airplanes?

RULING

In Indiana, aircraft are subject to the aircraft excise tax and registration fee that is in lieu of the ad valorem property tax levied for state or local purposes (see IC 6-6-6.5-12). Per IC 6-6-6.5-9(b), exemption from the aircraft excise tax is allowed on aircraft owned by and used exclusively in the service of Indiana or a political subdivision of Indiana. The aircraft are being exclusively used for proprietary purposes rather than for the service of the political subdivision. Therefore, the exemption as a political subdivision would not apply and the aircraft would be subject to the annual aircraft excise tax and registration fee.

6. The taxpayer is leasing seven (7) airplanes from a private company for use in this flight school. Is Indiana sales tax applicable to the purchase of parts, oil, and fuel for these airplanes?

RULING

The ruling regarding this issue would be identical to that in questions 3 and 4 above.

7. When, if ever, is sales tax to be charged customers on the use of the leased airplanes?

RULING

The ruling regarding this issue would be identical to that in question 2 above.

8. Does the fact that the taxpayer provides necessary fueling and aviation services to the flying public in addition to providing other governmental services to these same customers affect our tax exempt status and, if so, how? A specific question we have is:

If the Airport Authority consumes some of the supplies it purchases when providing these services, should we be paying sales tax for these supplies?

RULING

The fixed base operations (fueling and aviation services) fall within the definition of proprietary activities rather than governmental functions. Therefore supplies consumed in providing these services by the taxpayer would be subject to the Indiana sales tax since they fall outside the exemption provided by IC 6-2.5-5-16 as explained above.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

DEPARTMENT OF STATE REVENUE

